

House Study Bill 187

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON COMMERCE,
REGULATION AND LABOR BILL BY
CHAIRPERSON JENKINS)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the privatization of the state liquor
2 warehouse, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1384YC 81
5 ec/gg/14

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1 1 Section 1. Section 123.3, subsection 36, Code 2005, is
1 2 amended to read as follows:
1 3 36. "Wholesaler" means any person, other than a distiller
1 4 or rectifier of alcoholic liquor, vintner, brewer, or bottler
1 5 of beer or wine, who shall sell, barter, exchange, offer for
1 6 sale, have in possession with intent to sell, deal, or traffic
1 7 in alcoholic liquor, wine, or beer. A wholesaler shall not
1 8 sell for consumption upon the premises.
1 9 Sec. 2. Section 123.19, subsections 1 and 4, Code 2005,
1 10 are amended to read as follows:
1 11 1. Any manufacturer, distiller, or importer of alcoholic
1 12 beverages shipping, selling, or having alcoholic beverages
1 13 brought into this state for resale by the state or for
1 14 wholesale as provided in section 123.42A shall, as a condition
1 15 precedent to the privilege of so trafficking in alcoholic
1 16 liquors in this state, annually make application for and hold
1 17 a distiller's certificate of compliance which shall be issued
1 18 by the administrator for that purpose. No brand of alcoholic
1 19 liquor shall be sold by the division in this state unless the
1 20 manufacturer, distiller, importer, and all other persons
1 21 participating in the distribution of that brand in this state
1 22 have obtained a certificate. The certificate of compliance
1 23 shall expire at the end of one year from the date of issuance
1 24 and shall be renewed for a like period upon application to the
1 25 administrator unless otherwise suspended or revoked for cause.
1 26 Each application for a certificate of compliance or renewal
1 27 shall be made in a manner and upon forms prescribed by the
1 28 administrator and shall be accompanied by a fee of fifty
1 29 dollars payable to the division. However, the fee requirement
1 30 as provided in this subsection need not apply to a
1 31 manufacturer, distiller, or importer who ships or sells in
1 32 this state no more than eleven gallons or its case equivalent
1 33 during any fiscal year as a result of "special orders" which
1 34 might be placed, as defined and allowed by divisional rules
1 35 adopted under this chapter.
2 1 4. Any violation of the requirements of this section,
2 2 except subsection 3, shall subject the violator to the general
2 3 penalties provided in this chapter and in addition to the
2 4 general penalties, is grounds for suspension or revocation of
2 5 the certificate of compliance or wholesale license, after
2 6 notice and hearing before the administrator. Willful failure
2 7 to comply with requirements which may be imposed under
2 8 subsection 3 is grounds for suspension or revocation of the
2 9 certificate of compliance only.
2 10 Sec. 3. Section 123.19, Code 2005, is amended by adding
2 11 the following new subsection:
2 12 NEW SUBSECTION. 7. Each holder of a certificate of
2 13 compliance shall report monthly to the division on forms
2 14 provided for that purpose, a list of all alcoholic liquors by
2 15 package size, kind, and quantity sold to licensed wholesalers
2 16 in this state and a list of the wholesalers who received the
2 17 size, kind, and quantity of alcoholic liquors purchased.
2 18 Prior to shipment, the certificate holder shall post with the

2 19 division the F.O.B. or dock price of the alcoholic liquor
2 20 which shall be the same as the price would be if sold to the
2 21 division. The division shall establish the markup that shall
2 22 be remitted to the division upon sale of the alcoholic liquor
2 23 to licensed retailers for both on-premises and off-premises
2 24 consumption. The division may also sell liquor to wholesalers
2 25 for resale to licensed retailers. The division shall bill the
2 26 alcoholic liquor cost but shall not collect the established
2 27 markup on alcoholic liquor to wholesalers until the alcoholic
2 28 liquor is sold at wholesale to retailers. All liquor
2 29 wholesalers shall sell only those brands of alcoholic liquor
2 30 which are manufactured, bottled, distilled, rectified,
2 31 shipped, or imported by a person holding a current distiller's
2 32 certificate of compliance. All alcoholic liquor shipped into
2 33 this state or acquired from the division shall come to rest in
2 34 a warehouse located in this state prior to its resale at
2 35 wholesale. The warehouse of the wholesaler shall be the
3 1 licensed premises. A holder of a certificate of compliance or
3 2 the holder's agent, or a liquor wholesaler or the wholesaler's
3 3 agent, shall not discriminate between retail licensees
3 4 authorized to sell alcoholic liquor for consumption either on
3 5 premises or off premises. A holder of a distiller's
3 6 certificate of compliance or the distiller's agent shall not
3 7 engage in the business of selling alcoholic liquor to licensed
3 8 wholesalers by discriminating as to the price at which goods
3 9 are offered between the wholesalers.

3 10 Sec. 4. Section 123.30, subsection 3, paragraphs a, b, c,
3 11 and e, Code 2005, are amended to read as follows:

3 12 a. CLASS "A". A class "A" liquor control license may be
3 13 issued to a club and shall authorize the holder to purchase
3 14 alcoholic liquors from class "E" liquor control licensees or
3 15 licensed wholesalers only, wine from class "A" wine permittees
3 16 or class "B" wine permittees who also hold class "E" liquor
3 17 control licenses 530 wines from native wine manufacturers,
3 18 and to sell liquors, wine, and beer to bona fide members and
3 19 their guests by the individual drink for consumption on the
3 20 premises only.

3 21 b. CLASS "B". A class "B" liquor control license may be
3 22 issued to a hotel or motel and shall authorize the holder to
3 23 purchase alcoholic liquors from class "E" liquor control
3 24 licensees or licensed wholesalers only, and native only, wine
3 25 from class "A" wine permittees or class "B" wine permittees
3 26 who also hold class "E" liquor control licenses only, and
3 27 native wines from native wine manufacturers, and to sell
3 28 liquors, wine, and beer to patrons by the individual drink for
3 29 consumption on the premises only. However, beer may also be
3 30 sold for consumption off the premises. Each license shall be
3 31 effective throughout the premises described in the
3 32 application.

3 33 c. CLASS "C". A class "C" liquor control license may be
3 34 issued to a commercial establishment but must be issued in the
3 35 name of the individuals who actually own the entire business
4 1 and shall authorize the holder to purchase alcoholic liquors
4 2 from class "E" liquor control licensees or licensed
4 3 wholesalers only, wine from class "A" wine permittees or class
4 4 "B" wine permittees who also hold class "E" liquor control
4 5 licenses only, and native wines from native wine
4 6 manufacturers, and to sell liquors, wine, and beer to patrons
4 7 by the individual drink for consumption on the premises only.
4 8 However, beer may also be sold for consumption off the
4 9 premises.

4 10 A special class "C" liquor control license may be issued
4 11 and shall authorize the holder to purchase wine from class "A"
4 12 wine permittees or class "B" wine permittees who also hold
4 13 class "E" liquor control licenses only, and to sell wine and
4 14 beer to patrons by the individual drink for consumption on the
4 15 premises only. However, beer may also be sold for consumption
4 16 off the premises. The license issued to holders of a special
4 17 class "C" license shall clearly state on its face that the
4 18 license is limited.

4 19 e. CLASS "E". A class "E" liquor control license may be
4 20 issued and shall authorize the holder to purchase alcoholic
4 21 liquor from the division or licensed wholesalers only and to
4 22 sell the alcoholic liquor to patrons for consumption off the
4 23 licensed premises and to other liquor control licensees. A
4 24 class "E" license shall not be issued to premises at which
4 25 gasoline is sold. A holder of a class "E" liquor control
4 26 license may hold other retail liquor control licenses or
4 27 retail wine or beer permits, but the premises licensed under a
4 28 class "E" liquor control license shall be separate from other
4 29 licensed premises, though the separate premises may have a

4 30 common entrance. However, the holder of a class "E" liquor
4 31 control license may also hold a class "B" wine or class "C"
4 32 beer permit or both for the premises licensed under a class
4 33 "E" liquor control license.
4 34 The division may issue a class "E" liquor control license
4 35 for premises covered by a liquor control license or wine or
5 1 beer permit for on-premises consumption, if the premises are
5 2 in a county having a population under nine thousand five
5 3 hundred in which no other class "E" liquor control license has
5 4 been issued by the division, and no other application for a
5 5 class "E" license has been made within the previous twelve
5 6 consecutive months.

5 7 Sec. 5. NEW SECTION. 123.42A WHOLESALER'S LICENSE.

5 8 1. Upon application in the prescribed form and accompanied
5 9 by a fee of two thousand dollars and subject to the provisions
5 10 of this chapter, the administrator shall grant a license,
5 11 valid for a one-year period after date of issuance, to a
5 12 qualifying wholesaler of good moral character, which shall
5 13 allow the wholesaler to purchase alcoholic liquor from
5 14 manufacturers either within or without the state for the
5 15 purpose of selling to the division and customers of the
5 16 wholesaler engaged in the sale of alcoholic liquor at retail
5 17 outside the state, and to other licensed wholesalers and
5 18 retail liquor licensees licensed to sell liquor for
5 19 consumption either on the premises or off the premises.
5 20 Alcoholic liquor shall not be sold for consumption on the
5 21 licensed premises of the wholesaler.

5 22 2. A wholesaler may purchase alcoholic liquor from the
5 23 division for retail sale to class "A", "B", "C", "D", and "E"
5 24 liquor control licensees. The division shall charge a
5 25 wholesaler the same price for alcoholic liquor sold to class
5 26 "E" liquor control licensees, including the markup required in
5 27 section 123.24, subsection 4, less a cost computed by the
5 28 division which the division would have had to assume if
5 29 alcoholic liquor had been stored and delivered to class "E"
5 30 licensees by the division. Wholesalers shall sell only that
5 31 alcoholic liquor upon which the appropriate markup has been
5 32 paid to the division.

5 33 3. A licensed wholesaler shall keep proper books of
5 34 account and records showing the amount of alcoholic liquor
5 35 sold by the wholesaler which shall be open to inspection by
6 1 the administrator at all times. Liquor control licensees
6 2 purchasing alcoholic liquor from licensed wholesalers shall
6 3 keep proper books of account and records showing each purchase
6 4 of alcoholic liquor made by the licensee, and the date and the
6 5 amount of each purchase and the name of the person from whom
6 6 each purchase was made. The books of account and records
6 7 shall be open to inspection by the administrator and agents of
6 8 the division of beer, wine, and liquor law enforcement of the
6 9 department of public safety during the normal business hours
6 10 of the licensee.

6 11 4. A licensed wholesaler who has more than one place of
6 12 business shall have a separate license for each separate place
6 13 of business maintained by the licensee where liquor is stored,
6 14 warehoused, or sold. A licensed wholesaler shall not store
6 15 alcoholic liquor overnight in premises which are not licensed
6 16 by the division. A licensed wholesaler shall deliver liquor
6 17 to all classes of retail liquor licensees licensed for both
6 18 on-premises and off-premises consumption as provided in this
6 19 chapter. Retail liquor licensees shall accept delivery of
6 20 liquor at their licensed premises only from licensed
6 21 wholesalers. Delivery of alcoholic liquor from an unlicensed
6 22 premise to a licensed premise at retail or from one retail
6 23 licensed premise to another is prohibited, except that a class
6 24 "E" liquor control licensee may sell and deliver liquor to a
6 25 liquor control licensee licensed to sell alcoholic liquor for
6 26 consumption on the premises where licensed only. A class "E"
6 27 liquor licensee shall not sell or deliver alcoholic liquor to
6 28 another class "E" liquor control licensee even when there is a
6 29 common ownership of all the premises by one class of retail
6 30 liquor licensee. A retail liquor control licensee shall not
6 31 hold an interest in a licensed wholesaler's business either
6 32 directly or indirectly. Except as otherwise provided in this
6 33 chapter, a wholesale liquor license shall be issued to a
6 34 person who complies with the following:

6 35 a. Submits a written application for the license and
7 1 states on the application under oath all of the following:

7 2 (1) The name and place of residence of the applicant and
7 3 the length of time the applicant has lived at the place of
7 4 residence.

7 5 (2) That the applicant is a citizen of the state of Iowa,

7 6 or if a corporation, that the applicant is authorized to do
7 7 business in Iowa.

7 8 (3) The place of birth of the applicant, and if the
7 9 applicant is a naturalized citizen, the time and place of
7 10 naturalization, or if a corporation, the state of
7 11 incorporation.

7 12 (4) The location of the premises in Iowa where the
7 13 applicant intends to use the license.

7 14 (5) The name of the owner of the premises, and if that
7 15 owner is not the applicant, that the applicant is the actual
7 16 lessee of the premises.

7 17 b. Establishes all of the following:

7 18 (1) That the applicant meets the test of good moral
7 19 character.

7 20 (2) That the premises where the applicant intends to use
7 21 the license conform to all applicable laws, health
7 22 regulations, and fire regulations, and constitute a safe and
7 23 proper place or building.

7 24 Sec. 6. NEW SECTION. 123.42B LIQUOR MARKUP TAX.

7 25 In addition to the annual license fee to be paid by all
7 26 wholesale liquor licensees under this chapter, there shall be
7 27 levied and collected from the licensees on all liquor
7 28 manufactured for sale or sold in this state to wholesalers and
7 29 all liquor imported into this state for sale at wholesale, to
7 30 the division and sold in this state at wholesale, a markup as
7 31 established by the alcoholic beverages division as provided
7 32 for in this chapter. However, no markup shall be levied or
7 33 collected on liquor shipped outside this state by a liquor
7 34 wholesaler or sold by one liquor wholesaler to another liquor
7 35 wholesaler. The markup shall not exceed the markup policy as
8 1 established by the division on sales by the division to
8 2 wholesalers. Licensed wholesalers shall pick up from the
8 3 division warehouse or other licensed warehouse as designated
8 4 by the division, alcoholic liquor for resale to licensed
8 5 retailers during hours as established by the division and all
8 6 liquor purchased for resale by wholesalers or retailers shall
8 7 be paid by certified check prior to or at the time of
8 8 delivery.

8 9 Sec. 7. TRANSITION. On and after January 1, 2006, the
8 10 alcoholic beverages division of the department of commerce
8 11 shall no longer warehouse, sell, or deliver alcoholic liquor.
8 12 The division shall continue to establish and collect the
8 13 markup on alcoholic liquor as provided in section 123.42B.

8 14 EXPLANATION

8 15 This bill provides for the sale of alcoholic liquor at the
8 16 wholesale level by licensed wholesalers. The annual license
8 17 fee would be \$2,000. The bill allows liquor retailers
8 18 licensed for on-premises consumption to purchase alcoholic
8 19 liquor directly from wholesalers or from class "E" licensed
8 20 retailers as at present. The retailers are not now allowed to
8 21 purchase or receive delivery from the state.

8 22 After January 1, 2006, the state of Iowa will no longer be
8 23 permitted to warehouse or deliver alcoholic beverages. The
8 24 state will continue to establish the markup on alcoholic
8 25 liquor and collect the markup as a tax on the sales when sold
8 26 by the wholesaler to retailers on a monthly basis similar to
8 27 the way in which beer and wine excise taxes are collected.

8 28 Class "E" liquor licensees will be able to purchase liquor
8 29 from licensed wholesalers or the state as they presently do
8 30 until January 1, 2006, when all liquor sales will revert to
8 31 private wholesalers.

8 32 A violator of the provisions of Code chapter 123, if
8 33 another penalty is not provided, is guilty of a serious
8 34 misdemeanor under Code section 123.90.

8 35 LSB 1384YC 81

9 1 ec:nh/gg/14